

# भारत का राजपत्र The Gazette of India

असाधारण  
EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY



सं० 18] नई दिल्ली, सोमवार, अप्रैल 30, 1979/वैशाख 10, 1901  
No. 18] NEW DELHI, MONDAY, APRIL 30, 1979/VAISAKHA 10, 1901

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation

## MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (Legislative Department)

New Delhi, the 30th April, 1979/Vaisakha 10, 1901 (Saka)

The following Act of Parliament received the assent of the President on the 30th April, 1979, and is hereby published for general information:—

### THE CONSTITUTION (FORTY-FOURTH AMENDMENT) ACT, 1978

[30th April, 1979]

An Act further to amend the Constitution of India.

Be it enacted by Parliament in the Twenty-ninth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Forty-fourth Amendment) Act, 1978.

Short  
title and  
commen-  
cement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

2. In article 19 of the Constitution,—

Amend-  
ment of  
article 19.

(a) in clause (1),—

(i) in sub-clause (e), the word “and” shall be inserted at the end;

(ii) sub-clause (f) shall be omitted;

(b) in clause (5), for the words, brackets and letters “sub-clauses (d), (e) and (f)”, the words, brackets and letters “sub-clauses (d) and (e)” shall be substituted.

Amend-  
ment of  
article 22.

3. In article 22 of the Constitution,—

(a) for clause (4), the following clause shall be substituted, namely:—

‘(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than two months unless an Advisory Board constituted in accordance with the recommendations of the Chief Justice of the appropriate High Court has reported before the expiration of the said period of two months that there is in its opinion sufficient cause for such detention:

Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman shall be a serving Judge of the appropriate High Court and the other members shall be serving or retired Judges of any High Court:

Provided further that nothing in this clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (a) of clause (7).

*Explanation.*—In this clause, “appropriate High Court” means,—

(i) in the case of the detention of a person in pursuance of an order of detention made by the Government of India or an officer or authority subordinate to that Government, the High Court for the Union territory of Delhi;

(ii) in the case of the detention of a person in pursuance of an order of detention made by the Government of any State (other than a Union territory), the High Court for that State; and

(iii) in the case of the detention of a person in pursuance of an order of detention made by the administrator of a Union territory or an officer or authority subordinate to such administrator, such High Court as may be specified by or under any law made by Parliament in this behalf;’

(b) in clause (7),—

(i) sub-clause (a) shall be omitted;

(ii) sub-clause (b) shall be re-lettered as sub-clause (a); and

(iii) sub-clause (c) shall be re-lettered as sub-clause (b) and in the sub-clause as so re-lettered, for the words, brackets, letter and figure “sub-clause (a) of clause (4)”, the word, brackets and figure “clause (4)” shall be substituted.

Amend-  
ment of  
article 30.

4. In article 30 of the Constitution, after clause (1), the following clause shall be inserted, namely:—

“(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.”.

5. The sub-heading "*Right to Property*" occurring after article 30 of the Constitution shall be omitted.

Omission of sub-heading after article 30.

6. Article 31 of the Constitution shall be omitted.

Omission of article 31.

7. In article 31A of the Constitution, in clause (1), for the words and figures "article 14, article 19 or article 31", the words and figures "article 14 or article 19" shall be substituted.

Amendment of article 31A.

8. In article 31C of the Constitution, for the words and figures "article 14, article 19 or article 31", the words and figures "article 14 or article 19" shall be substituted.

Amendment of article 31C.

9. Article 38 of the Constitution shall be renumbered as clause (1) thereof and after the clause as so renumbered, the following clause shall be inserted, namely:—

Amendment of article 38.

"(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

10. For article 71 of the Constitution, the following article shall be substituted, namely:—

Substitution of new article for article 71.

"71. (1) All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

Matters relating to, or connected with, the election of a President or Vice-President.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court, acts done by him in the exercise and performance of the powers and duties of the office of President or Vice-President, as the case may be, on or before the date of the decision of the Supreme Court shall not be invalidated by reason of that declaration.

(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.

(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him."

11. In article 74 of the Constitution, in clause (1), the following proviso shall be inserted at the end, namely:—

Amendment of article

"Provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration."

12. In article 77 of the Constitution, clause (4) shall be omitted.

Amendment of article

Amend-  
ment of  
article 83.

13. (1) In article 83 of the Constitution, in clause (2), for the words "six years" in both the places where they occur, the words "five years" shall be substituted.

(2) The amendments made by sub-section (1) to clause (2) of article 83 shall apply also to the House of the People in existence on the date of coming into force of this section without prejudice to the power of Parliament with respect to the extension of the duration of that House under the proviso to that clause.

Substitu-  
tion of  
new  
article  
for  
article  
103.

14. For article 103 of the Constitution, the following article shall be substituted, namely:—

Decision  
on ques-  
tions as to  
disqualifi-  
cations of  
members.

"103. (1) If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion."

Amend-  
ment of  
article  
105.

15. In article 105 of the Constitution, in clause (3), for the words "shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution", the words, figures and brackets "shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978" shall be substituted.

Amend-  
ment of  
article  
123.

16. In article 123 of the Constitution, clause (4) shall be omitted.

Amend-  
ment of  
article  
132.

17. In article 132 of the Constitution,—

(a) in clause (1), for the words "if the High Court certifies", the words, figures and letter "if the High Court certifies under article 134A" shall be substituted;

(b) clause (2) shall be omitted;

(c) in clause (3), the words "or such leave is granted," and the words "and, with the leave of the Supreme Court, on any other ground" shall be omitted.

18. In article 133 of the Constitution, in clause (1), for the words "if the High Court certifies—", the words, figures and letter "if the High Court certifies under article 134A—" shall be substituted. Amendment of article 133.
19. In article 134 of the Constitution, in sub-clause (c) of clause (1), for the word "certifies", the words, figures and letter "certifies under article 134A" shall be substituted. Amendment of article 134.
20. After article 134 of the Constitution, the following article shall be inserted, namely:— Insertion of new article 134A.
- "134A. Every High Court, passing or making a judgment, decree, final order, or sentence, referred to in clause (1) of article 132 or clause (1) of article 133, or clause (1) of article 134,— Certificate for appeal to the Supreme Court.
- (a) may, if it deems fit so to do, on its own motion; and
- (b) shall, if an oral application is made, by or on behalf of the party aggrieved, immediately after the passing or making of such judgment, decree, final order or sentence,
- determine, as soon as may be after such passing or making, the question whether a certificate of the nature referred to in clause (1) of article 132, or clause (1) of article 133 or, as the case may be, sub-clause (c) of clause (1) of article 134, may be given in respect of that case."
21. In article 139A of the Constitution, for clause (1), the following clause shall be substituted, namely:— Amendment of article 139A.
- "(1) Where cases involving the same or substantially the same questions of law are pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court is satisfied on its own motion or on an application made by the Attorney-General of India or by a party to any such case that such questions are substantial questions of general importance, the Supreme Court may withdraw the case or cases pending before the High Court or the High Courts and dispose of all the cases itself:
- Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment."
22. In article 150 of the Constitution, for the words "after consultation with", the words "on the advice of" shall be substituted. Amendment of article 150.
23. In article 166 of the Constitution, clause (4) shall be omitted. Amendment of article 166.
24. (1) In article 172 of the Constitution, in clause (1), for the words "six years" in both the places where they occur, the words "five years" shall be substituted. Amendment of article 172.



(2) The amendments made by sub-section (1) to clause (1) of article 172—

(a) shall not apply to any existing State Legislative Assembly the period of existence whereof as computed from the date appointed for its first meeting to the date of coming into force of this section (both dates inclusive) is more than four years and eight months but every such Assembly shall, unless sooner dissolved, stand dissolved on the expiry of—

(i) a period of four months from the date of coming into force of this section; or

(ii) a period of six years from the date appointed for its first meeting,

whichever period expires earlier;

(b) shall apply to every other existing State Legislative Assembly without prejudice to the power of Parliament with respect to the extension of duration of such Assembly under the proviso to the said clause (1).

*Explanation I.*—In its application to the Legislative Assembly of the State of Sikkim referred to in clause (b) of article 371F of the Constitution, this sub-section shall have effect as if—

(i) the date appointed for the first meeting of that Assembly were the 26th day of April, 1975; and

(ii) the references in clause (a) of this sub-section to “four years and eight months” and “six years” were references to “three years and eight months” and “five years” respectively.

*Explanation II.*—In this sub-section, “existing State Legislative Assembly” means the Legislative Assembly of a State in existence on the date of coming into force of this section.

Substitution of new article for article 192.  
Decision on questions as to disqualifications of members.

25. For article 192 of the Constitution, the following article shall be substituted, namely:—

“192. (1) If any question arises as to whether a member of a House of the Legislature of a State has become subject to any of the disqualifications mentioned in clause (1) of article 191, the question shall be referred for the decision of the Governor and his decision shall be final.

(2) Before giving any decision on any such question, the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion.”.

Amendment of article 194.

26. In article 194 of the Constitution, in clause (3), for the words “shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution”, the words, figures and brackets “shall be those of that House and of its members and committees immediately before the coming into force of section 26 of the Constitution (Forty-fourth Amendment) Act, 1978” shall be substituted.

Amendment of article 213.

27. In article 213 of the Constitution, clause (4) shall be omitted.

28. In article 217 of the Constitution, in clause (2),—

Amend-  
ment of  
article  
217.

(a) in sub-clause (b), the word “or” occurring at the end shall be omitted;

(b) sub-clause (c) shall be omitted;

(c) in the *Explanation*, clause (a) shall be re-lettered as clause (aa) and before clause (aa) as so re-lettered, the following clause shall be inserted, namely:—

“(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or ~~has~~ held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;”.

29. In article 225 of the Constitution, the following proviso shall be inserted at the end, namely:—

Amend-  
ment of  
article  
225.

“Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.”.

30. In article 226 of the Constitution,—

Amend-  
ment of  
article  
226.

(a) in clause (1), for the portion beginning with the words “writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them” and ending with the words “such illegality has resulted in substantial failure of justice.”, the following shall be substituted, namely:—

“writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.”;

(b) for clauses (3), (4), (5) and (6), the following clause shall be substituted, namely:—

“(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of

such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.”;

(c) clause (7) shall be renumbered as clause (4).

Amend-  
ment of  
article  
227.

31. In article 227 of the Constitution,—

(a) for clause (1), the following clause shall be substituted, namely:—

“(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.”;

(b) clause (5) shall be omitted.

Amend-  
ment of  
article  
239B.

32. In article 239B of the Constitution, clause (4) shall be omitted.

Omis-  
sion of  
article  
257A.

33. Article 257A of the Constitution shall be omitted.

Insertion  
of new  
Chapter  
IV in  
Part XII.

34. In Part XII of the Constitution, after Chapter III, the following Chapter shall be inserted, namely:—

#### “CHAPTER IV.—RIGHT TO PROPERTY

Persons  
not to be  
deprived  
of pro-  
perty save  
by au-  
thority of  
law.

300A. No person shall be deprived of his property save by authority of law.”.

Amend-  
ment of  
article  
329.

35. In article 329 of the Constitution, in the opening portion, the words, figures and letter “but subject to the provisions of article 329A” shall be omitted.

Omission  
of article  
329A.

36. Article 329A of the Constitution shall be omitted.

Amend-  
ment of  
article  
352.

37. In article 352 of the Constitution,—

(a) in clause (1),—

(i) for the words “internal disturbance”, the words “armed rebellion” shall be substituted;



(ii) the following *Explanation* shall be inserted at the end, namely:—

*“Explanation.—A Proclamation of Emergency declaring that the security of India or any part of the territory thereof, is threatened by war or by external aggression or by armed rebellion may be made before the actual occurrence of war or of any such aggression or rebellion, if the President is satisfied that there is imminent danger thereof.”;*

(b) for clauses (2), (2A) and (3), the following clauses shall be substituted, namely:—

“(2) A Proclamation issued under clause (1) may be varied or revoked by a subsequent Proclamation.

(3) The President shall not issue a Proclamation under clause (1) or a Proclamation varying such Proclamation unless the decision of the Union Cabinet (that is to say, the Council consisting of the Prime Minister and other Ministers of Cabinet rank appointed under article 75) that such a Proclamation may be issued has been communicated to him in writing.

(4) Every Proclamation issued under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of one month unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation (not being a Proclamation revoking a previous Proclamation) is issued at a time when the House of the People has been dissolved, or the dissolution of the House of the People takes place during the period of one month referred to in this clause, and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.

(5) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (4):—

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament the Proclamation shall, unless revoked, continue in force for a further period of six months from the date on which it would otherwise have ceased to operate under this clause:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a

resolution approving the continuance in force of such Proclamation has been passed by the Council of States but no resolution with respect to the continuance in force of such Proclamation has been passed by the House of the People during the said period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of the said period of thirty days, a resolution approving the continuance in force of the Proclamation has been also passed by the House of the People.

(6) For the purposes of clauses (4) and (5), a resolution may be passed by either House of Parliament only by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.

(7) Notwithstanding anything contained in the foregoing clauses, the President shall revoke a Proclamation issued under clause (1) or a Proclamation varying such Proclamation if the House of the People passes a resolution disapproving, or, as the case may be, disapproving the continuance in force of, such Proclamation.

(8) Where a notice in writing signed by not less than one-tenth of the total number of members of the House of the People has been given, of their intention to move a resolution for disapproving, or, as the case may be, for disapproving the continuance in force of, a Proclamation issued under clause (1) or a Proclamation varying such Proclamation,—

(a) to the Speaker, if the House is in session; or

(b) to the President, if the House is not in session,

a special sitting of the House shall be held within fourteen days from the date on which such notice is received by the Speaker, or, as the case may be, by the President, for the purpose of considering such resolution.”;

(c) clause (4) shall be renumbered as clause (9) and in the clause as so renumbered, for the words “internal disturbance” in both the places where they occur, the words “armed rebellion” shall be substituted;

(d) clause (5) shall be omitted.

38. In article 356 of the Constitution,—

(a) in clause (4),—

(i) for the words, brackets and figure “one year from the date of the passing of the second of the resolutions approving the Proclamation under clause (3)”, the words “six months from the date of issue of the Proclamation” shall be substituted;

(ii) in the first proviso, for the words “one year”, the words “six months” shall be substituted;

(iii) in the second proviso, for the words “one year”, the words “six months” shall be substituted;

(b) for clause (5), the following clause shall be substituted, namely:—

“(5) Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless—

(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and

(b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned.”.

39. Article 358 of the Constitution shall be renumbered as clause (1) of that article, and—

Amendment of article 358.

(a) in clause (1) as so renumbered,—

(i) in the opening portion, for the words “While a Proclamation of Emergency is in operation”, the words “While a Proclamation of Emergency declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression is in operation” shall be substituted;

(ii) in the proviso, for the words “where a Proclamation of Emergency”, the words “where such Proclamation of Emergency” shall be substituted;

(b) after clause (1) as so renumbered, the following clause shall be inserted, namely:—

“(2) Nothing in clause (1) shall apply—

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or

(b) to any executive action taken otherwise than under a law containing such a recital.”.

40. In article 359 of the Constitution,—

Amendment of article 359.

(a) in clauses (1) and (1A), for the words and figures “the rights conferred by Part III”, the words, figures and brackets “the rights conferred by Part III (except articles 20 and 21)” shall be substituted;

(b) after clause (1A), the following clause shall be inserted, namely:—

“(1B) Nothing in clause (1A) shall apply—

(a) to any law which does not contain a recital to the effect that such law is in relation to the Proclamation of Emergency in operation when it is made; or

(b) to any executive action taken otherwise than under a law containing such a recital.”.

**Amend-  
ment of  
article 360.**

**41. In article 360 of the Constitution,—**

(a) for clause (2), the following clause shall be substituted, namely:—

“(2) A Proclamation issued under clause (1)—

(a) may be revoked or varied by a subsequent Proclamation;

(b) shall be laid before each House of Parliament;

(c) shall cease to operate at the expiration of two months, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c), and if a resolution approving the Proclamation has been passed by the Council of States, but no resolution with respect to such Proclamation has been passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution, unless before the expiration of the said period of thirty days a resolution approving the Proclamation has been also passed by the House of the People.”;

(b) clause (5) shall be omitted.

**Insertion  
of new  
article  
361 A.**

**42. After article 361 of the Constitution, the following article shall be inserted, namely:—**

**Protection  
of publi-  
cation of  
proceed-  
ings of  
Parlia-  
ment and  
State Le-  
gislatures.**

‘361A. (1) No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, unless the publication is proved to have been made with malice:

Provided that nothing in this clause shall apply to the publication of any report of the proceedings of a secret sitting of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State.

(2) Clause (1) shall apply in relation to reports or matters broadcast by means of wireless telegraphy as part of any programme or service provided by means of a broadcasting station as it applies in relation to reports or matters published in a newspaper.

*Explanation.*—In this article, “newspaper” includes a news agency report containing material for publication in a newspaper.’.

- 
- |  |  |
|--|--|
| 43. In article 371F of the Constitution, in clause (c), for the words "six years", the words "five years" shall be substituted, and for the words "five years" in both the places where they occur, the words "four years" shall be substituted. | Amend-<br>ment of<br>article<br>371F.  |
| 44. In the Ninth Schedule to the Constitution, entries 87, 92 and 130 shall be omitted.  | Amend-<br>ment of<br>the<br>Ninth<br>Schedule.   |
| 45. In the Constitution (Forty-second Amendment) Act, 1976, sections 18, 19, 21, 22, 31, 32, 34, 35, 58 and 59 shall be omitted.   | Amend-<br>ment of<br>the Cons-<br>titution<br>(Forty-<br>second<br>Amend-<br>ment)<br>Act, 1976. |

R. V. S. PERI SASTRI,  
*Secy. to the Govt. of India.*



